



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,975	06/15/2006	Eric Jervis	92132-10	8208
22463	7590	08/14/2009		
SMART & BIGGAR 438 UNIVERSITY AVENUE SUITE 1500, BOX 111 TORONTO, ON M5G 2K8 CANADA			EXAMINER KETTER, JAMES S	
			ART UNIT 1636	PAPER NUMBER
			MAIL DATE 08/14/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/582,975

Applicant(s)

JERVIS ET AL.

Examiner

James S. Ketter

Art Unit

1636

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-11,13-15,17-76,80-108 and 111-119 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 111 is/are allowed.
- 6) ☒ Claim(s) 1,3,5-11,13-15,17-76,80-108,112 and 113 is/are rejected.
- 7) ☒ Claim(s) 114-119 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 15 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-846)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 4/14/2009
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Upon reconsideration of the claims, a rejection under 35 USC §112, second paragraph, is presented below. The delay in setting forth the rejection is regretted.

Claims 114-119 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 111 is allowed.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3, 5-11, 13-15, 17-76, 80-108, 112 and 113 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claims 1, 22, 23, 80 and 82, and therefore to all of the instant claims which depend therefrom, the phrases “comparable to the size of said cell”, “comparable to the size of the cells or bodies of cells” or “comparable to the size of a single cell” are unclear, as the word “comparable” is not defined in either the prior art or the instant specification in a quantitative fashion. It is not clear what degree of variation from the size of any particular cell in question would be regarded as “comparable”. As such, the metes and bounds of the claims are not clear.

In claim 5, the term “pre-selected” is unclear, as it does not present a clear limitation. Pre-selection in the instant context is merely an inherent outcome of any design choice, and

design choice is made in the practice of any of the embodiments of the claimed invention. Thus, the meaning of the claim is made unclear by this term.

Claim 6 recites “specific cell type”. However, as any cell type is what it is, it is not apparent how one type is “specific” and another is not. As such, the meaning of the claim is unclear.

Also in claim 6, the “cell type” is positioned, whereas in fact a “cell” is positioned. As such, the claim is confusing.

In claim 8, and therefore in claims 9 and 10 which depend therefrom, the verb “are” should be “is”. As presently drafted, the claim is grammatically incorrect.

In claim 9, and therefore claim 10 which depends therefrom, the term “pre-determined” is unclear, as it does not present a clear limitation. Pre-determination in the instant context is merely an inherent outcome of any design choice, and design choice is made in the practice of any of the embodiments of the claimed invention. Thus, the meanings of the claims are made unclear by this term.

Claim 13 recites “said introducing”. However, there is insufficient antecedent basis for this phrase.

In claim 21, both occurrences of the word “molecules” should be “molecule”. As drafted, the claim is grammatically incorrect.

In claim 49, the term “pre-selected” is unclear, as it does not present a clear limitation. Pre-selection in the instant context is merely an inherent outcome of any design choice, and design choice is made in the practice of any of the embodiments of the claimed invention. Thus, the meaning of the claim is made unclear by this term.

Also in claim 49, the term “pre-determined” is unclear, as it does not present a clear limitation. Pre-determination in the instant context is merely an inherent outcome of any design choice, and design choice is made in the practice of any of the embodiments of the claimed invention. Thus, the meanings of the claims are made unclear by this term.

Also in claim 49, the term “characteristics” is unclear in the present context, as anything can be understood to have a virtually infinite set of characteristics. Thus, it is not clear what actual limitation the use of this term places on the claim.

Claim 50 recites the phrase “control of properties”. However, since essentially any aspect of anything may be regarded as a “property” of that thing, it is unclear what is being controlled in the instant claim.

Claim 80 recites “a apparatus”. However, “an apparatus” is grammatically correct.

Claim 112 recites the phrase “generally parallel”. However, the term “generally” is relative, and lacks a precise meaning both in the prior art and in the instant specification.

Claim 113 recites the phrase “generally planar”. However, the term “generally” is relative, and lacks a precise meaning both in the prior art and in the instant specification.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James S. Ketter whose telephone number is 571-272-0770. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on 571-272-0951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JSK
14 August 2009

/James S. Ketter/
Primary Examiner, Art Unit 1636